



January 24, 2000

Ms. Kristi DeCluitt
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2000-0212

Dear Ms. DeCluitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131758.

The College Station Police Department (the “department”) received a request for the department’s case file, “including the recording of the 9-1-1 emergency call,” relating to a vehicular incident which involved several fatalities. You state that you have released the audiotape of the 9-1-1 call. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code and section 5.08 of article 4495b of Vernon’s Texas Civil Statutes. We have considered the exceptions you claim and have reviewed the information you submitted.

As section 552.108 is the most inclusive of the exceptions you raise, we will address it first. Section 552.108, the “law enforcement exception,” provides in relevant part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted [from public disclosure] if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). You state that the incident to which the requested information pertains is the subject of a pending criminal investigation. We therefore conclude that the department may withhold most of the requested information relating to its investigation pursuant to section 552.108(a)(1). We note, however, that section 552.108 does not except from public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We believe that section 552.108(c) refers to the basic “front-page” offense and arrest report information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976). The department must release basic “front-page” offense and arrest report information, even if it does not literally appear on the front page of a police report. In this instance, we believe that basic information also includes the news release that the department appears to have issued on October 10, 1999. *See also* Gov’t Code 552.022(15). The department also has discretion to release information that is otherwise excepted from disclosure under section 552.108(a)(1), provided that it is not confidential under other law.

See Gov't Code § 552.007. Additionally, the department must release any responsive information that other applicable law makes public. See, e.g., Gov't Code § 552.022(17) (information also contained in a public court record); V.T.C.S. art. 6701d, § 47, as amended by Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414 (accident report).¹ We have marked information that such other law may make public.

With regard to a portion of the requested information, you raise section 552.101 of the Government Code in conjunction with section 5.08 of the former Medical Practice Act, article 4495b of Vernon's Texas Civil Statutes. We note that the Seventy-sixth Legislature repealed article 4495b in enacting the new Occupations Code.² The former article 4495b now is codified as the Medical Practice Act at subtitle B of title 3 of the Occupations Code, and the former section 5.08 of article 4495b is codified at chapter 159 of the Occupations Code. With regard to your reliance on section 552.101, we also note that access to medical records is governed by the Medical Practice Act and not chapter 552 of the Government Code. See Open Records Decision No. 598 (1991). As codified, the Medical Practice Act provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b). Thus, the medical records that you submitted may be released only in accordance with chapter 159 of the Occupations Code. You have not informed us, and it does not otherwise appear, that any of the Medical Practice Act's exceptions to the confidentiality of medical records or any of its consent provisions is applicable here. See Occupations Code §§ 159.003, 159.004, 159.005. We therefore conclude that the medical records we have marked are confidential under the Medical Practice Act and must not be disclosed.

¹Separate acts of the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code and, without reference to the repeal and codification, amended section 47 of article 6701d relating to the disclosure of accident reports. See Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex. Gen. Laws 1025, 1870-71 (repeal and codification); Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414 (amendment). Because the repeal of a statute by a code does not affect an amendment of the same statute by the same legislature that enacted the code, the amendment is preserved and given effect as part of the code provision. See Gov't Code § 311.031(c). The Seventy-fifth Legislature repealed the former article 6701d of Vernon's Texas Civil Statutes, as codified and amended by the Seventy-fourth Legislature, and conformed and amended section 550.065 of the Transportation Code regarding disclosure of accident report information, but a Travis County District Court enjoined the enforcement of the amendment. See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, §§ 13, 16, 1997 Tex. Gen. Laws 4575, 4582-83; *Texas Daily Newspaper Ass'n v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo, which the Supreme Court has defined as "the last, actual peaceable, non-contested status that preceded the pending controversy," until the final hearing of a case on its merits. See *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (Tex. 1962) (temporary injunction); *Texas v. Southwestern Bell Tel. Co.*, 526 S.W.2d 526 (Tex. 1975) (status quo). Thus, in this instance, the status quo relevant to the disclosure of accident report information is the former section 47 of article 6701d, V.T.C.S., as amended by the Seventy-fourth Legislature. It may be found following section 550.065 of the Transportation Code.

²See Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 6, 1999 Tex. Sess. Law Serv. (Vernon) (enacting Occupations Code). No substantive change was intended. See *id.* at § 7.

You also assert that the name and address of a 9-1-1 caller are excepted from disclosure by the informer's privilege in conjunction with section 552.101, which protects information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The informer's privilege is well-established under Texas case law. See *Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724 (Tex. Crim. App. 1928). The United States Supreme Court described the rationale for the privilege as follows in *Roviaro v. United States*, 353 U.S. 53, 59 (1957):

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. . . . The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The informer's privilege protects the identities of individuals who report violations of statutes to police, other law enforcement agencies, and certain administrative officials. See Open Records Decision No. 279 (1981). In order for information to come under the protection of the informer's privilege, it must relate to a violation of a criminal or civil statute. See Open Records Decision Nos. 515 (1988), 391 (1983). The informer's privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 (1990). It does not protect the contents of a communication that do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. See Open Records Decision No. 202 (1978). In this instance, we agree that the information you withheld is excepted from disclosure under section 552.101 and the informer's privilege.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

³We also note that certain information relating to 9-1-1 services is confidential under various provisions of the Health and Safety Code. See Health & Safety Code §§ 771.061 (information furnished by service provider or contained in governmental entity's or third party's address database); 772.118 (telephone number and address furnished by service supplier to emergency communication district in county with population over two million); 772.218 (same in county with population over 860,000); 772.318 (same in county with population over 20,000 or two or more contiguous counties with population over 20,000 each); compare Health & Safety Code, ch. 772, subchapter E (no confidentiality provision for emergency communication district in county with population over 1.5 million not governed by section 772.118); see generally Open Records Decision Nos. 661 (1999), 649 (1996). You have not informed us, however, whether any of these provisions is applicable to the information at issue here.

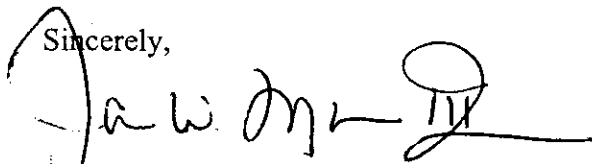
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 131758

Encl. Submitted documents

cc: Ms. Suyin So
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(w/o enclosures)